

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO. 4781 OF 2024

Santosh Kashinath Bandre

...Petitioner

Vs.

Supriya Santosh Bandre & Anr.

...Respondents

Ms. Anita Wakchaure for the Petitioner.

Mr. A. R. Metkari, APP for State.

CORAM : ARIF S. DOCTOR, J.

DATE : 3RD DECEMBER, 2024

P.C.:-

1. This Writ Petition takes exception to an order dated 18th September, 2024 passed by the Additional Sessions Judge, Sessions Court, C. R. No.88, Mazgaon, Gr. Mumbai. The principle and only ground raised before me in challenge was that the order was passed only on the basis of the material submitted by the Respondent (wife) and that the Sessions Court had failed to consider the income of the Petitioner (husband).

2. After struggling a bit, Learned Counsel for the Petitioner submitted that on account of miscommunication between the Petitioner and the Petitioner's Advocate, the Petitioner did not file the Affidavit-in-Reply to oppose the said

application. However, a perusal of the Impugned Order shows that the Sessions Court has come to the conclusion given the conduct of the Petitioner that the Petitioner has made every efforts to conceal his income, I am satisfied on reading the Impugned Order that several opportunities were given to the Petitioner to file his Affidavit of income/assets as also to file an Affidavit-in-Reply, but the Petitioner has not done so. It is too simplistic to state that the same was on account of a “miscommunication between the Advocate for the Petitioner and the Petitioner”. I must reproduce the detailed findings in this regard which are as follows:-

“11. Perusal of the record goes to show that as per Exh.8, some documents were tendered on record i.e. copy of roznama dated 27/10/2021 goes to show that original complainant/wife filed affidavit of assets and liabilities and therefore, the matter appears to be adjourned for filing affidavit of assets and liabilities by original respondent No.1/husband for the purpose of hearing interim application. The roznama dated 04/12/2021 goes to show that as the respondent No.1/husband failed to file affidavit of assets and liabilities, therefore, order passed to that effect and therefore, matter was adjourned for hearing/arguments on interim application. Subsequently, as per roznama dated 05/01/2022, application at Exh.6 came to be allowed, moved by respondent No.1/husband at the costs of Rs.500/- for filing say and affidavit of assets and liabilities. Despite the said order, the roznama dated 08/10/2021 shows that no reply was filed and therefore, the application was proceeded without reply and adjourned for hearing on interim application. Thereafter, the matter was again kept on 05/02/2022 for filing the affidavits of assets and liabilities by respondent No.1/husband and so as per roznama dated 07/04/2022 and thereafter, as per roznama dated 27/04/2022. The roznama dated 09/05/2022 shows that interim application came to be allowed. It is rightly pointed out by

learned Advocate Mr. Parab that ample opportunity was given to the appellant/husband/original respondent No.1 to file affidavit of assets and liabilities and therefore, despite setting aside no reply, it appears that reply was not filed as well as the affidavit of assets and liabilities. It goes to show that conduct of the appellant that he wants to conceal his income from the Court and that might be the reason that affidavit of assets and liabilities was not filed. Hence, the appeal fails. Hence, I noted my findings to point Nos.1 to 4 accordingly and proceed to pass the following order :

ORDER

- 1. Criminal Appeal No.426 of 2022 is dismissed.*
- 2. The impugned order of interim maintenance dated 09/05/2022 passed by the learned Additional Chief Metropolitan Magistrate, 4th Court, Girgaon, Mumbai, in C.C. No.09/DV/2021 is confirmed and made absolute.*
- 3. Inform the learned A.C.M.M. accordingly.*
- 4. Criminal Appeal No.426 of 2022 is disposed of accordingly.*
- 5. Proceeding is closed.*
- 6. Record and proceeding be sent to the record room.*
- 7. The offshoot proceeding Criminal Miscellaneous Application No.1443 of 2022 becomes redundant. Hence, disposed of for want of prosecution."*

3. Petition is accordingly dismissed for the aforesaid reasons.

(ARIF S. DOCTOR, J.)